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**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA**

IN RE:

SILVER CLUB, a Nevada corporation, *et al*

Debtors.

KONAMI GAMING, INC., a Nevada
corporation,

Plaintiff,

vs.

NORTHERN NEVADA ASSET HOLDINGS,
LLC, a Nevada limited liability company,
HOLDER HOSPITALITY GROUP, INC., a
Nevada corporation, SILVER CLUB, a Nevada
corporation, PARKER'S MODEL T, INC., a
Nevada corporation, THE HOLDER GROUP
EL CAPITAN, INC., a Nevada corporation,
THE HOLDER GROUP ELKO, LLC, a Nevada
limited liability company,

Defendants.

Case No.: BK-N-09-51953-GWZ
Chapter 11, Jointly Administered with:
09-51956 Parker's Model T, Inc.
09-51958 The Holder Group El Capitan, Inc.
09-51961 The Holder Group Elko, LLC

ADVERSARY NO. _____

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COMPLAINT FOR DECLARATORY AND OTHER RELIEF

NOW COMES the Plaintiff, Konami Gaming, Inc. ("**Konami**"), by its attorneys Howard & Howard Attorneys PLLC, and for its Complaint for Declaratory Judgment and other relief states as follows:

PARTIES AND JURISDICTION

1. Plaintiff Konami is a Nevada corporation with its main office and headquarters located at 585 Trade Center Drive, Las Vegas, Nevada 89119-3720.

2. Upon information and belief, Non-Debtor Defendant Northern Nevada Asset Holdings, LLC ("**NNAH**") is a Nevada limited liability company with its main office and headquarters located at 1515 N. Academy Boulevard #400, Colorado Springs, Colorado, 80909. Upon information and belief, NNAH is duly authorized to conduct business in this jurisdiction and, at all times relevant to this action, has conducted business in this jurisdiction

3. Upon information and belief, Non-Debtor Defendant Holder Hospitality Group, Inc. ("**Hospitality**") is a Nevada corporation with its main office and headquarters located at 1040 Victorian Avenue, Sparks, Nevada 89431.

4. Upon information and belief, Debtor Defendant Silver Club ("**Silver Club**") is a Nevada corporation with its main office and headquarters located in Washoe County, Nevada.

5. Upon information and belief, Debtor Defendant Parker's Model T, Inc. ("**Parker's Model T**") is a Nevada corporation with its main office and headquarters located in Humboldt County, Nevada.

6. Upon information and belief, Debtor Defendant The Holder Group El Capitan, Inc. ("**El Capitan**") is a Nevada corporation with its main office and headquarters located in Humboldt County, Nevada.

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10. This adversary proceeding and the causes of action herein constitute “core” proceedings within the meaning of 28 U.S.C. § 157(b)(2)(G), (K), and (O). This is an adversary proceeding as defined by Rule 7001 of the Federal Rules of Bankruptcy Procedure.

A. Konami's Agreements with Hospitality

12. Under the System Agreement, Hospitality agreed to purchase the Konami Casino Management System (“**System**”), an on-line slot metering system comprised of certain equipment and other personal property (collectively, the “**Equipment**”) and a site-specific non-exclusive license (“**License**”) to use the System software (“**Software**”) at certain casinos in Nevada, including Charlie Holder’s Casino, El Capitan Casino, Fernley Truck Inn, Model T. Hotel Casino, Red Garter Hotel Casino, Scoreboard Sports Lounge, Sharkey’s Casino, Silver

1 Club Hotel Casino, Stockmen's Hotel Casino Commercial Casino, Sundance Hotel Casino,
2 Wig Wam Casino (collectively the "**Casinos**").¹

3 13. The total cash consideration for the Equipment and the License was
4 \$5,138,933.13. Under the terms of the System Agreement, Hospitality paid \$254,037.50 upon
5 execution of the System Agreement, and promised to pay \$762,112.50, plus interest at a rate of
6 12 percent per annum, in 11 equal installments of \$73,827.33, beginning on the first day of
7 April 2006 and continuing on the first day of each month thereafter until paid in full.

8 14. The remaining balance of the total purchase price was to be paid by Hospitality
9 in 24 equal principal installments commencing on the first day of the month following the date
10 when the Equipment for that Casino was accepted, and continuing each month thereafter for 12
11 months on an interest-free basis and then for the next 12 months at an interest rate of eight
12 percent per annum until the applicable balance of the total purchase price for that Casino was
13 fully paid. (System Agreement, ¶ 3.A. at 1-2.) Hospitality agreed that title to all forms of
14 intellectual property embedded in the goods sold remained with Konami. (*Id.* ¶ 6, at 2; *id.*,
15 Sched. E. ¶¶ 3.2 & 4.1 at 1-2.)

16 15. On or about February 28, 2006, Holder Hospitality and Konami entered into a
17 System Maintenance and Support Agreement ("**Support & Maintenance Agreement**"), a true
18 and complete copy of which is attached hereto as **Exhibit B**. Under the Support &
19 Maintenance Agreement, Konami was engaged to provide maintenance and support for the
20 System at the Casinos.

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26 ¹ For various reasons after entering in the System Agreement, the parties agreed to omit Charlie Holder's Casino
27 and the Fernley Truck Inn from the locations where the System would be installed. In addition, to the best of
28 Konami's knowledge, the Wig Wam Casino, Charlie Holder's Casino and the Fernley Truck Inn are no longer
owned by any Holder entity. Konami was notified by Hospitality that the Silver Club closed down operations
earlier this year, and that the Equipment that was primarily used at the Wig Wam is currently stored at the Silver
Club.

1 16. Both the System Agreement and the Support and Maintenance Agreement
2 (collectively the “**Agreements**”) are between Konami and Hospitality, only.

3 17. None of the Debtors is a party to either of the Agreements. None of the
4 Debtors is in privity with Konami.
5

6 **B. Konami’s Pre-Petition Termination of the License**

7 18. On June 27, 2008, Konami notified Hospitality that it was in material breach of
8 the System Agreement due to its failure to make timely payments. A true and complete copy of
9 the June 27, 2008 notice is attached as **Exhibit C**.
10

11 19. Hospitality failed to timely cure the breaches that Konami identified in writing.
12 Accordingly, Konami notified Hospitality on October 14, 2008 that it (Konami) was
13 immediately terminating the License for the use of the Software and suspending support and
14 maintenance services to the Casinos. (See October 14, 2008 Notices, true and complete copies
15 of which are attached as **Exhibit D**.) Konami demanded immediate payment of the arrearage
16 under the System Agreement in the approximate amount of \$3.04 million. (See *id.*)
17

18 20. Over the following months, Konami and Hospitality negotiated a forbearance of
19 the exercise by Konami of its rights and remedies under the Agreements. During these
20 negotiations, Hospitality introduced NNAH to Konami as a potential suitor for the acquisition of
21 Hospitality’s assets.
22

23 21. In express reliance upon the representations made to Konami, Konami did not
24 turn off the System or otherwise enforce its legal rights. Over the course of these negotiations,
25 Konami had been advised and/or led to believe (a) that discussions were underway regarding a
26 possible sale of one or more of the Casinos, (b) that NNAH desired to purchase some of the
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1 Casinos and (c) that NNAH was interested in funding the continued operation of the System.

2 Upon information and belief, that these representations were either overstated or untrue.

3
4 22. In late February 2009 and early March 2009, Hospitality and Konami
5 negotiated the return of certain equipment in exchange for a credit against arrearages owed
6 under the System Agreement and a waiver of support and maintenance fees under the Support
7 & Maintenance Agreement for the period running from November 2008 through February
8 2009. Those negotiations resulted in an understanding between the parties that was confirmed
9 by letter dated March 12, 2009, a true and complete copy of which is attached as **Exhibit E**.
10 After taking into account the promised performance by Hospitality (and resulting credits), the
11 arrearage under the System Agreement comes to the current approximate outstanding amount
12 of \$2.4 million.
13

14 23. Upon information and belief, in May 2009, NNAH commenced a state court
15 action for the appointment of a receiver over the Debtors in the Second Judicial District Court,
16 Washoe County, Nevada (the "**Receiver Action**"). Neither NNAH, Hospitality or any of the
17 Debtors (or any person acting on behalf of any of the foregoing) disclosed the commencement
18 of the Receiver Action to Konami. Indeed, Konami first learned of the Receiver Action shortly
19 before the hearing on the appointment of the receiver.
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22 24. On June 19, 2009 (the "**Petition Date**"), each of the Debtors filed its respective
23 voluntary petition under Chapter 11 of the Bankruptcy Code with this Court.

24 **COUNT I (DECLARATORY JUDGMENT REGARDING**
25 **THE DEBTORS' LACK OF AN INTEREST IN THE AGREEMENTS, THE LICENSE AND THE**
26 **KONAMI INTELLECTUAL PROPERTY)**

27 25. Konami realleges the preceding allegations as though fully set forth herein.
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1 26. None of the Debtors is a party to either the System Agreement or the Support
2 & Maintenance Agreement.

3 27. None of the Debtors is in privity with Konami under either the System
4 Agreement or the Support & Maintenance Agreement.

5 28. Accordingly, none of the Debtors has any interest, legal or equitable, in either
6 of the Agreements.

7 29. Because the License and the right to use the Software arises under the System
8 Agreement, none of the Debtors have any interest, legal or equitable, in either the License
9 or the Software.

10 30. There is no agreement between Konami and any of the Debtors that would give
11 any of the Debtors any interest, legal or equitable, in any other Konami intellectual property that
12 may be in the possession of any of the Debtors (collectively, "**Konami Intellectual Property**").

13 WHEREFORE, Konami requests that:

14 A. This Court enter a judgment against each of the Debtors, declaring such Debtor
15 does not have any interest, whether legal or equitable, in any of the following property and
16 therefore, declare that none of the following is property of the estate of any of the Debtors:

- 17 1. either of the Agreements;
18 2. either the License or the Software; and
19 3. the Konami Intellectual Property;

20 B. This Court enter a judgment against each of the Debtors, declaring that the
21 automatic stay does not apply to prevent Konami from enforcing its rights and pursuing its
22 remedies, against any and all non-debtors, including, without limitation, Hospitality and Harold
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1 D. Holder, Sr., under the Agreements and with respect to each of the License, the Software and
2 Konami Intellectual Property; and

3 C. This Court grant such further and other relief that the Court deems appropriate.

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5 **COUNT II (DECLARATORY JUDGMENT REGARDING**
6 **THE TERMINATION OF THE LICENSE)**

7 31. Konami repeats and realleges the preceding allegations as though fully set forth
8 herein.

9 32. Even if any of the Debtors had some interest in the License, Konami validly
10 terminated the License prior to the Petition Date.

11 WHEREFORE, Konami alternatively requests that this Court a judgment against each
12 of the Debtors, declaring that the License was validly terminated prior to the Petition Date and,
13 therefore, declare that it is not property of the estate of any of the Debtors and that the
14 automatic stay does not apply to prevent Konami from enforcing its rights and remedies with
15 respect to the License including, without limitation, turning off the System. Konami also
16 requests that this Court grant such further and other relief that the Court deems appropriate.
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19 **COUNT III (EQUITABLE ESTOPPEL)**

20 33. Konami repeats and realleges the preceding allegations as though fully set forth
21 herein.

22 34. Through the affirmative misrepresentations and material factual omissions of
23 Hospitality and the Debtors, Konami was misled regarding the status of the negotiations
24 between NNAH and the Debtors concerning a sale of Hospitality's and the Debtors' businesses
25 to NNAH.
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1 35. Konami actually and reasonably relied, to its detriment, on these affirmative
2 statements and omissions in forbearing to exercise its rights under the License and the
3 Agreements.

4 36. It would be inequitable for NNAH to profit from the misrepresentations and
5 material omissions of Hospitality and the Debtors.
6

7 37. Each of NNAH, Hospitality and the Debtors should be equitably estopped from
8 claiming that either the License or either of the Agreements was not terminated prior to the
9 Petition Date.
10

11 WHEREFORE, Konami requests that this Court rule that NNAH, Hospitality and the
12 Debtors, and any combination of the foregoing, are equitably estopped from claiming that
13 Konami validly terminated the License prior to the Petition Date. Konami also requests that
14 this Court grant such further and other relief that the Court deems appropriate.
15

16 **COUNT IV (DECLARATORY JUDGMENT DETERMINING THAT NNAH HAS NO LIENS UPON THE**
17 **AGREEMENTS, THE LICENSE, THE SOFTWARE OR THE KONAMI INTELLECTUAL PROPERTY)**

18 38. Konami realleges the preceding allegations as though fully set forth herein.

19 39. NNAH has asserted that it is the holder of a perfected security interest in all of
20 the personal property in which the Debtors have an interest, including the Agreements, the
21 License, the Software and the Konami Intellectual Property (collectively, the “Disputed
22 Collateral”).

23 40. It is axiomatic that a debtor cannot grant a security interest in property as to
24 which it has no legal or equitable right.
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26 41. When the Court grants some or all of the relief requested in Counts I through
27 III above, NNAH will not have a lien on some or all of the Disputed Collateral.
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1 42. Alternatively, under applicable federal law, neither Hospitality nor any of the
2 Debtors may transfer any interest in the License, in the Software or in the Konami Intellectual
3 Property without Konami's prior express consent.

4 43. Konami has not and does not consent to the transfer of any such interest, by
5 grant of consensual lien or otherwise, to NNAH.
6

7 WHEREFORE, Konami requests that:

8 A. This Court enter a declaratory judgment against NNAH, declaring that NNAH
9 does not have any lien upon or security interest in any of the Disputed Collateral;
10

11 B. In the alternative, this Court enter a declaratory judgment ruling that NNAH
12 does not have any lien upon or security interest in any of the License, the Software and the
13 Konami Intellectual Property; and

14 C. This Court grant such further and other relief that the Court deems appropriate.
15

16 **COUNT V (REQUEST FOR RELIEF FROM THE AUTOMATIC STAY)**

17 44. Konami realleges the preceding allegations as though fully set forth herein.

18 45. Upon information and belief, some or all of the Debtors are in possession of
19 property belonging to Konami including, without limitation, the Konami Intellectual Property,
20 to which said Debtor or Debtors has or have no legal or equitable right.

21 46. Any continued possession of Konami's property by any of the Debtors was and
22 is the product of the inequitable conduct on the part of some or all of the Debtors, or persons or
23 group of persons acting on their behalf or at their direction.
24

25 47. Some or all of the Debtors and/or their non-debtor affiliates have benefited
26 from the continued use of Konami's property without compensating Konami for this continued
27 use.
28

1 48. *For over eight months*, the Debtors and/or their non-debtor affiliates have
2 reaped this benefit without Konami receiving the required payments under the System
3 Agreement. Equity favors either return of Konami's property or *full* payment to Konami for its
4 continued use.
5

6 49. Pursuant to 11 U.S.C. § 362(d), cause exists to grant Konami relief from the
7 automatic stay so that it may recover the property wrongfully in the possession of the applicable
8 Debtor.

9 WHEREFORE, Konami requests that this Court enter an Order granting Konami relief
10 from the automatic stay so it may exercise its right of repossession with respect to any and all
11 of its property that is wrongfully in the possession of any of the Debtors, waiving the 10-day
12 stay period pursuant to Rule 4001(a)(3) of the Federal Rules of Bankruptcy Procedure, and
13 granting Konami such further and other relief that the Court deems appropriate.
14

15 DATED: September _____, 2009.
16

17 Howard & Howard Attorneys PLLC
18

19 /s/ James A. Kohl
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